PETITION FOR A WRIT OF CERTIORARI

No. 346

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HAROLD B. WILLEY, Clerk

In the Supreme Court of the United States

October Term 1953

EUGENE F. EVARTS,

Petitioner,

v.

ELOY GIN CORPORATION, SUNLAND GIN CORPORATION, PEETZER AND ZONE COTTON CORPORATION, WM. B. SPITZER, Receiver, JACK PEETZER, [illegible] BOARDERS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE [illegible] COURT OF APPEALS

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EUGENE F. EVARTS,

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ELOY GIN CORPORATION, SUNLAND GIN CORPORATION, PRETZER AND SONS COTTON CORPORATION, WM. E. SPRINGER, Receiver, JACK PRETZER, SR., and J. C. LANDERS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, Eugene F. Evarts, prays that a writ of certiorari issue from this Court to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above entitled case on May 29, 1953.

OPINIONS BELOW

The orders of the Referee in Bankruptcy (TR 20 and TR 29 at 41) are unreported. The minute entry judgment of the District Court confirming the orders of the Referee is unreported (TR 59). The opinion of the Court of Appeals (TR 76) is reported in 204 F. 2nd 712.

JURISDICTION

The judgment of the Court of Appeals was entered on May 29, 1953, (TR 75). A petition for rehearing was denied on June 30, 1953, (TR 87). The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1254 (1) and Rule 38 of this Court.

QUESTION PRESENTED

The question here involved relates strictly to the equity jurisdiction of a bankruptcy court, the Petitioner asserting that the opinion below is contrary to jurisdictional principles previously announced by this Court and, if the opinion below is followed, it will tend to confuse and mislead in the frequent administration of bankruptcy court affairs throughout the land; furthermore, that it is contrary to law.

Otherwise stated, can the machinery of a federal court legal proceeding be "used" by bankruptcy court Debtors in concert with creditors, stockholders, the Receiver, and other interested parties for their own personal benefit and pecuniary gain (including tax advantages) to circumvent the normal course of bankruptcy court proceedings and prevent equitable relief on a claim arising therein, because the Bankruptcy Act does not **specifically** provide for such kind of relief?

More particularly, whether a bankruptcy court in arrangement proceedings under Chapter XI (11 U.S.C.A.

701 et seq.) has jurisdiction to hear a claim asserted by Petitioner against the trust estates for compensation for his services in having procured the funds necessary to avert threatened adjudication in bankruptcy and consequent forced sale of debtors' properties, or completion of an arrangement, the services of Petitioner having been jointly requested by the Debtor corporation, their principal stockholders, creditors, and the Receiver, all of whom financially benefited; the plan for the normal procedure of obtaining authority from the Referee to pay for such services through a court sale having been deliberately and intentionally altered and circumvented by a course of dealings between the interested parties outside of the court proceedings, which dealings were intended to and did result in payment to creditors in full and a return of the estates to Debtor corporations, which the quity owners had sought in order to effectuate a private sale, and which said dealings outside the court proceedings were known by the Receiver to exist and were participated in by him, and also known by the Referee to exist and recognized by him in various of his official orders.

The question simply involves the extent of, or limitations upon, the equity powers of a bankruptcy court in administering property and affairs under its control and claims in respect thereof, about which jurisdictional authority there now exists uncertainty, confusion and conflict, as a result of the opinion below.

STATUTES INVOLVED

The pertinent statutory provisions involved are Title 11 U.S.C.A. § 11, and 11 U.S.C.A. § 701 et seq.

STATEMENT

Basically, Petitioner is seeking to establish an equitable claim in and against the bankruptcy court estates,

which claim had its inception and accomplishment during the course of the bankruptcy court proceedings. The net result of Petitioner's efforts was a complete and successful refinancing of Debtor corporations and, thus, elimination of the necessity of proceeding further with the arrangement in bankruptcy. There is no element herein which involves what is normally considered a "provable" debt under the Bankruptcy Act; there is no element herein of a demand to share in the "distribution" of the bankrupt estates; hence the mass of law under those two subject matters is not applicable. The facts themselves are important only insofar as they show the substantial, equitable basis of the claim asserted by Petitioner and the chronology of the record, which discloses that Petitioner was not a "stranger" to the proceedings and that Petitioner did, in fact, properly assert and maintain his equitable claim. The acts complained of constitute little short of a fraud upon the court.

A Receiver was appointed to operate the cotton gins and other properties of Debtor corporations, which three corporations had filed petitions in the District Court of Arizona, under Chapter XI of the Bankruptcy Laws, there being ultimately no adjudication in bankruptcy, and the request for an arrangement being withdrawn after the circumstances herein concerned had transpired and as a direct result of Petitioner's efforts. The Petitioner procured the source of funds which caused the receivership to be lifted, the creditors to be paid in full, and the properties of Debtors and another property operated by the Receiver personally to be sold to the advantage of the stockholders, all at the request of and with the active cooperation of the

Debors, their stockholders, and the Receiver. The original petition of the Petitioner herein sets forth certain pertinent facts (TR 3), to-wit:

(1) Creditors first requested Evarts, the Petitioner, to raise funds to alleviate the financial difficulties of the businesses involved and arranged the initial contact between Petitioner Evarts and Receiver during the pendency of the debtor proceedings (TR 4);

(2) The Receiver advised Petitioner Evarts of the precarious financial situation of Debtor corporations and disclosed full information to Evarts indicating possible financial losses and disasterous results of a forced sale and urgent need for financial relief (TR 4 - 7);

(3) Receiver explained to Evarts the Receiver's personal interest in combining an overall refinancing plan to include not only the receivership assets but also those of fourth corporation not in receivership but which said fourth corporation Receiver personally headed as President (TR 6);

(4) Receiver urged Evarts to exert his fund raising efforts and assured him a plan of adequate compensation would be worked out for Evarts and Receiver then referred Petitioner to Pretzer, executive head of Debtor corporations, who was acting on behalf of Debtor corporation (TR 4 - 7);

(5) Pretzer and other interested stockholders of Debtors urged Petitioner to use his efforts to raise the funds necessary and promised specific compensation to Evarts, if he raised the necessary financing (TR 8 - 10);

(6) Evarts accomplished the assignment and found the funds in the person of the prospective purchaser Landers (TR 10 - 11);

(7) Landers promised to assume and pay the compensation agreed upon to be paid Evarts (TR 13);

(8) The Receiver, Landers and Pretzer met to formulate closing plans under the deal originally outlined, which normally would have resulted in payment to Evarts of his compensation through allowances by the Referee; but thereafter and to circumvent receivership procedure and to avoid closing the deal through the Receiver, the interested parties, to further their own personal ends and to include some trading of properties, altered the transaction **in form only**, by-passing the usual court procedure as well as Petitioner Evarts (TR 11 - 14);

(9) The circumstances and results of the transaction remained the same and were pursuant to the original purpose and the original desired benefits did result, to-wit: payment or satisfaction of creditors in full through Landers personally, payment to Debtors' stockholders of a substantial sum for their equities, acquisition by the purchaser of desirable properties, personal benefits to the Receiver's own corporation outside of and in conjunction with the receivership proceedings, all as a result of Petitioner's efforts; **these results were brought about in this manner because the Receiver, pursuant to the agreed refinancing plan, refrained from otherwise disposing of the properties in court** (TR 15).

These equities arising under the bankruptcy court entitled Petitioner to assert his claim therein and have it heard. Petitioner's claim was asserted in the alter-

native against the estates of the Debtors, the Purchaser, Prezer, the Debtors, and the Receiver, being covered throughout his petition as well as in the prayer (TR 16 - 17).

The Referee entered two orders, which were appealed from: the first order dismissing Petitioner's claim asserted as against the Debtors and Pretzer, as the chief executive officer of Debtor corporations, and Landers as the purchaser on June 9, 1950 (TR 20); the second order filed August 12, 1950, dismissing the Bankruptcy Court proceedings and discharging the Receiver (TR 29). In the meantime, the Referee had held that no obligation existed on the Receiver as such to pay Petitioner's claim, and the Referee specified in his said order of August 12, 1950, that the finding in favor of the Receiver did not determine or involve the rights of Petitioner, if any, to any **equitable claim** against the trust estates, by virtue of the allegations of his petition (TR 37); hence the equitable claim against the estates was either included in the said order of June 9, 1950, and was dismissed for lack of jurisdiction, or was still pending at the time of the discharge of the Receiver and the dismissal of the proceedings in the said order of August 12, 1950; in either of which events the question on the equitable feature of Petitioner's claim is and was presented on appeal. In fact, the Referee, in certifying the question presented for review, included the claims against Debtor corporations, Pretzer and Landers, **and** the trust estates (TR 57), to-wit:

> "1. Does the Court have jurisdiction to hear Petitioner, Eugene F. Evart's claims against debtor corporation, Jack Pretzer, Sr., and J. C. Landers, or against the Trust Estates involved herein by

virtue of the allegations contained and asserted in the Petition of Eugene F. Evarts?

"2. Was the Referee in error to discharge the Receiver and enter the order of August 12, 1950, while these proceedings in question were pending?"

Also, the Petitioner, having given notice of appeal from both orders of June 9, 1950, and August 9, 1950, (Filed August 12, 1950), (TR 60 - 61), stated the point on which he relied on appeal, as follows (TR 65):

> "The Bankruptcy Court had jurisdiction to hear and determine the claim of Eugene F. Evarts, as asserted in his Petition of March 22, 1950, and it was, therefore, in error to dismiss his said Petition for lack of jurisdiction and discharge Receiver and dismiss the receivership proceedings before a determination of said claim."

Thus, the facts in the original petition and the record clearly presented the question herein asserted.

The District Court, on petition for review, upheld the Referee's action in dismissing the petition and in discharging the Receiver for want of jurisdiction to hear Petitioner's claim.

The Court of Appeals affirmed (TR 76) the District Court ruling, and held the Petitioner to be a "stranger" to the Bankruptcy Court proceedings who was attempting to enforce a plenary claim against the Debtors, the President of Debtors, and the Purchaser personally. It held that the equity powers of the Bankruptcy Court sought to be invoked by Petitioner to have his claim heard were insufficient "in the absence of some statutory authority" (TR 80). The lower court opinion held that the jurisdiction granted by Title 11 U.S.C.A., § 11,

is "limited to the express statutory authorizations" and that "the equity jurisdiction conferred by the Act [Bankruptcy] merely empowers the judge or referee in bankruptcy to employ the rules and principles of equity jurisprudence in the exercise of his bankruptcy jurisdiction" (TR 80).

It is the above opinion interpreting and announcing the limitation on the equitable powers of a bankruptcy court which Petitioner asserts is not only erroneous but is contrary to the pronouncements of this Court on this subject, and if followed will confuse and confound and do injustice in the frequent decisions which will hereafter be made in various bankruptcy courts in the whole United States.

REASONS FOR GRANTING THE WRIT

1. In the administration of bankrupt estates throughout the entire United States, the guideposts of bankruptcy court jurisdiction should be crystal clear. A court of appeals, which either has not followed or has misinterpreted the announced equity jurisdictional principles of this court can, if not corrected, set a precedent which must lead not only to great confusion in the general administration of bankruptcy affairs but to a plain defeat of justice in many cases now pending and hereafter brought. The decision below probably conflicts with applicable decisions of this Court.

2. This Court has established the concept of a Bankruptcy Court as being essentially a Court of Equity and that its proceedings are inherently proceedings in equity, with full power in the Court to inquire into the validity of any claim asserted against the estate. **Lesser v. Gray** 236 U.S. 70; 59 L. Ed. 471; **Pepper v. Litton**, 308 U.S. 295; 60 S.Ct. 238; **Securities and Exchange**

Commission v. U. S. Realty Company, 310 U.S. 434; 60 S.Ct. 1044; **American United Mutual Life Insurance Company v. City,** 311 U.S. 138; 61 S.Ct. 157; **Young v. Highbee,** 234 U.S. 204; 65 S.Ct. 594.

3. To pinpoint the area of divergence of opinion between the court below and this court, attention of the Court is invited to the language of this Court in **Pepper v. Litton,** supra, at page 244 of the Supreme Court Reporter, in discussing the meaning and scope of 11 U.S.C.A., Sec. 11, to the effect that bankruptcy courts are invested "with such jurisdiction at law and in equity as will enable them to exercise orginal jurisdiction in bankruptcy proceedings," as follows:

> "Hence, this court has held that **a bankruptcy court has full power to inquire into the validity of any claim asserted against the estate** and to disallow it if it is ascertained to be without lawful existence." (Emphasis supplied)

Insofar as the question of jurisdiction is concerned, the power to deny relief equals the power to grant relief. We are here concerned only with the **power** of the court, not with whether an asserted claim should be granted.

Again, in **American United Mutual Life Insurance Company v. City,** supra, in speaking of the equity power of a bankruptcy court, this Court said at page 162 of the Supreme Court Reporter:

> "That power [Equity] is ample for the exigencies of varying situations. **It is not dependent on express statutory provisions.** It inheres in the jurisdiction of a court of bankruptcy." (Emphasis supplied)

And, in **Young v. Highbee,** supra, where the acts giving rise to the Petitioner's claim occurred during the course of the bankruptcy proceedings, this Court, in answer to the contention that the bankruptcy court was without power to award relief, said at page 599 of the Supreme Court Reporter:

> "Courts of bankruptcy are courts of equity and exercise all equitable powers **unless prohibited by the Bankruptcy Act.**" (Emphasis supplied)

A claim, therefore, arising during the court proceedings, which bristles with equities in favor of Petitioner and which asserts actions on the part of the bankruptcy court debtors and the purchaser which approach being a fraud upon the court and which dealings include the sale of property in which the Receiver personally is interested, patently comes within the perview of this court's equity jurisdiction principles, as above announced.

It is held that a bankruptcy court, in the exercise of its equitable jurisdiction, has power to sift the circumstances surrounding any claim to see that an injustice or unfairness is not done in the administration of the bankrupt estates, and its duty to do so is especially clear when the claim seeking allowance accrues to the benefit of any officer, director or stockholder. **Pepper v. Litton,** supra. Conversely, the equitable jurisdiction of a bankruptcy court should be as alertly extended to the hearing and determination of a claim by a "stranger" who has contributed significantly to the benefit of the estate and of the officers and stockholders and the debtors, when the proceeding is sought to be utilized by them to defeat that very claim.

4. The legal treatment given this situation by the lower courts, as exemplified by the opinion below, com-

pletely ignores the principles announced by this Court and which were asserted throughout the whole proceedings by Petitioner, and the court below lays down divergent and contrary rules of bankruptcy jurisdiction construction. The court below, in its opinion (TR 80), in commenting upon the Bankruptcy Act grant of jurisdictional power, in Title 11 U.S.C.A. § 11, above quoted, says:

> "It is bankruptcy jurisdiction, **limited to the express statutory authorizations.** The equity jurisdiction conferred by the Act **merely** empowers the judge or referee in bankruptcy to employ the rules and principles of equity jurisprudence in the exercise of his bankruptcy jurisdiction. (Citations). Thus, appellant's invocation of the equity powers of the Bankruptcy Court is not sufficient to confer jurisdiction on the bankruptcy court of the issues raised here, **in the absence of some statutory authority.**" (Emphasis supplied)

The court below has thus placed a construction on the jurisdictional grant of power in the Bankruptcy Act which **limits** the powers of a bankruptcy court to the narrow frame of specific statutory authorization and, in fact, denies equity jurisdiction, however necessary it may be, to protect bankruptcy court proceedings in order to carry out the basic purposes of the Bankruptcy Act. It allows equitable considerations only in matters of construction. The lower court requires some specific statutory authority to hear such a claim as that asserted by Petitioner as an original equitable claim against the bankrupt estate, as distinguished from a provable debt against Debtors, with which latter type of claim the Bankruptcy Law itself is primarily concerned. Petitioner's claim having arisen **after** the jurisdiction of the bankruptcy court attached, it neces-

sarily cannot be considered as a bankruptcy claim exisiting in the usual sense of the Act; therefore, under the lower court's construction of powers, there was no claim under the Act to which equitable principles could be "applied" in administering an estate. Hence, the lower court concluded there is no place for a consideration of the claim asserted and the jurisdiction did not exist to hear this type of claim.

This sort of reasoning and construction of jurisdictional powers of a bankruptcy court followed to its logical conclusion would bar consideration by the court of claims based on situations of the sort included in the cases cited in paragraph 2 above decided by this Court. In effect, the lower court opinion holds (1) express statutory authority is required to hear any equitable claim asserted after bankruptcy court jurisdiction has attached by the filing of petitions in bankruptcy, and (2) only claims can be administered which are recognized specifically by law under the Bankruptcy Act, and (3) the only equity power of a bankruptcy court is the application of equitable principles to the consideration of legal claims authorized specifically by the Bankruptcy Act.

This is a dangerous and erroneous conception of the jurisdiction of a bankruptcy court. This court has aptly previously noted this distinction and confusion in reasoning when it observed in **Lesser v. Gray**, supra, at page 475 of the Law Edition Report:

> "A disallowed claim and a non-probable debt are not indentical things; and a failure accurately to observe the distinction has led to confusion in argument."

Not only does the Chandler Act (Sec. 11 U.S.C.A. 711) give the Bankruptcy Court exclusive jurisdiction of the

debtor and his property in Chapter XI proceedings, but this Court has strongly indicated under circumstances presenting a similar legal question that the jurisdiction to hear this claim rested exclusively in the Bankruptcy Court (**Lesser v. Gray**, supra; if so, a good defense would exist if Evarts sued at law in a separate action.

5. Subsection 2 of 11 U.S.C.A. § 11 specifically grants authority to allow or disallow claims against bankrupt estates, and Subsection 15 thereof is a grant of statutory authority in the bankruptcy courts "to make such orders, issue such process and enter such judgments, **in addition to those specifically provided for**, as may be necessary for the enforcement of the provisions of this title." (emphasis supplied) Doubtless this grant of statutory authority is sufficient in and of itself to reject the narrow construction reached by the court below.

6. The practical aspect of the view taken by the court below would be to deter or defeat the primary public objective of the Bankruptcy Act in its modern evolution to assist the rehabilitation of business enterprises and their continuance as going concerns, in contrast to the historical bankruptcy function of mere liquidation and distribution of cash proceeds to creditors. Rehabilitation of the enterprise, permitting debtors (and their equity holders) to preserve an interest in the assets held intact as a going concern, was the primary aim of the important modern extensions of the Bankruptcy Act as amended in 1933, 1934 and 1938, and particularly so with respect to the amendment and succeeding Chapter XI, as involved here. It would surely operate as a substantial deterrent to the accomplishment of that public purpose, if the beneficiaries of such a proceeding—the creditors and equity owners of the debtor corporations—after having invested themselves with

the protection of the court against liquidation of the enterprise, should be permitted to induce another to contribute to the successful rehabilitation of the debtor enterprises, upon promise of compensation, and then utilize the court proceeding itself to repudiate their promises and thus enjoy the fruits of his contribution by carrying out the arrangement made available to them by private action outside the debtor proceedings. It would appear that judicial sanction of such a result could well operate to deter the continued services and contributions of specialists and others having peculiar talents in the interested and specialized fields of reorganization and rehabilitation of complex industrial enterprises.

7. It is most appropriate for this Court to exercise supervisory power over lower courts having the administration of bankruptcy estates, because any ill-considered construction of such a thing as equity jurisdiction could well lead to disastrous results in the multitude of cases before the numerous refeeres in bankruptcy and lower courts. To allow the lower court decision in this case to stand could certainly defeat justice on a wide scale. Having failed to meet or even discuss the precise jurisdictional point here advanced by Petitioner and asserted by him throughout the whole course of the proceedings, it might well serve the ends desired if this court summarily reversed the Court of Appeals on the authorities of this court previously announced and cited in paragraphs 2 above.

CONCLUSION

In conclusion, let us note that the object and purpose of Chapter XI procedure is to alleviate by court

proceedings the financial difficulties of persons and firms, to the end that creditors may be paid and the businesses continue in operation.

To deny the power of a bankruptcy court to deal broadly with all matters pertaining to the accomplishment of that purpose, once business properties come under control of the court, will tend materially to curtail and discourage the activities of those actively engaged in bringing about a successful termination of the financial problems.

To hold a bankruptcy court is without jurisdiction to hear an equitable claim **arising out of and during the course of the court proceedings themselves** is to repudiate the established principles of this Court.

Wherefore, by reason of the foregoing, this petition for a writ of certiorari should be granted.

Respectfully submitted.

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